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## LAW ENFORCEMENT SESSION

### GATHERING AND PRESENTING EVIDENCE

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One of the responsibilities of the wildlife officer is to prepare enough evidence against the violator to justify taking him before the court with reasonable chances for a conviction. This preparation includes the identification, collection and the preservation of such kinds of evidence and in such a manner that the admissibility and effectiveness of the evidence in court will serve the ends of justice. He must know what constitutes evidence; what evidence is admissible in court; when and in what manner to apprehend presumed law violators so that no legal obstacles to conviction can arise from that source; how to develop information; how to recognize evidence in the field; how to collect and preserve evidence to safeguard its admissibility; how to obtain evidence from witnesses and from others who may be able to help; how to detect discrepancies, dishonesty or general lack of good faith; when to call upon experts for help; and how to testify, and other courtroom techniques. An officer may be required to appear in court either as a witness or as the prosecutor for his own case. In either event, adequate preparations and complete familiarity with the details are absolutely necessary. Although it is not expected that every prosecution will result in a conviction, at the same time the officer should have such grounds for instituting the proceedings as will justify him, in the opinion of the district attorney and of the judge who tries the case, in having brought the action. It is recognized that at times a prosecution is justifiable and desirable even when it is a moral certainty that a conviction will not be had.

Kinds of evidence include physical objects such as bodies of game animals, blood, weapons, empty shell cases, glass and articles of clothing; but to be used as evidence must be proved relevant to the issue. Probably before you can use some of these articles in court you will need to call in an expert to examine said article. Should these articles be sent to the lab. they should be handled very carefully. They should be wrapped securely and the box sealed and marked *evidence*. An invoice should be placed outside the box giving all details of the articles involved, thus helping the technician to know what to expect and also what you wish to prove. Field notes are probably one of the best courses of evidence on game and fish violations. These notes should be taken at the time of violation or when you contact the defendant or from witnesses examined and should include date, time, place and conversation and any other material used in violation.

The legal instrument that permits the prosecutor to view these grounds is the *brief*. By disclosing the strength and weaknesses of the prosecutor's position and the possible lines of defense, the brief enables him to determine if an arrest is justifiable under evidence submitted. Such a brief is particularly necessary when the defendant elects to fight the charges. For this reason, when in every case, no matter how trivial, the officer should prepare a brief of the evidence for his own and for the district attorney. The average district attorney handles dozens of cases a month and can give a misdemeanor charge only limited time. He may not be too familiar with game and fish laws, with game and fish conditions, or with practices prevailing in the field. If he can sit down with a brief of the case, illustrated with sketches and photos he is in better

position to grasp quickly the circumstances and possibilities of action. Furthermore, he will have the brief with him during the trial to refresh his memory and to oppose the defense better during cross examination. The brief, prepared by the officer, should list the code sections involved and the alleged offenses. It should give the "who, what, when, where, how and why" of the crime, and be listed chronologically. It should give the position, observation, and the action of the officer. It should list witnesses and a brief of the testimony they can or will give.

Previous to his appearance in court, the officer should review the violation and discuss with the prosecuting attorney what the approach to the case will be and what questions will be asked. This preparation will increase the effectiveness of his testimony. A refreshed memory will help the trial to go along smoothly and will appear to present a vivid recollection of events as they occurred. While it is not expected that an officer will remember intricate sets of figures or complicated and long drawn out details, constant referring to notes may impair the value of his testimony. He should also bear in mind that if he refers to his notes in court, the opposing counsel may ask to see them and may cross examine him on them. For this reason the officer should coach himself until he is able to reconstruct mentally the crime and the evidence pointing to it. In this respect it is helpful to arrange all the material chronologically and then review it thoroughly from original notes, or any other material he plans to use on the witness stand. The officer-witness and the prosecutor should function as a team. A preliminary discussion before the trial begins will afford opportunity to decide on the approach to the case and on the matter of questioning. As regards the approach to the case, serious consideration is given the types of witnesses, the particular judge; and the jury. In any approach selected, it is always necessary to act with deference toward both the court and the jury. Good courtroom technique requires that evidence be presented in a logical, concise manner in order to put over a point. During the pre-trial meeting, the lawyer learns what the officer is going to testify and how he will testify; the witness learns what questions the lawyer is going to ask and how he will ask them. He also learns how he should react to the questions he will undergo from both prosecutor and defense attorney. The preliminary discussion will not only set the witness at ease, but will help him to understand exactly what any given question will mean. Witnesses can be prepared for affirmative examinations, but they obviously cannot be prepared for all possible cross examination questions. Some of these questions are used to test the credence of the witnesses and of his knowledge, but they may be used also to test consistency of testimony. The witness should be instructed not to become excited and to be sure the question is understood before he answers it; not to guess at answers to questions, but rather to state the answer is not known. A witness may answer a question in part and ask for restatement or further explanation. He may later reanswer an earlier question if it becomes necessary. All statements should be made in conversational tone, but loud enough for the jury and the court to hear and understand. Most answers should be directed toward the jury. Always be courteous, do not take too much time to answer a question, and tell the truth in all instances. Do not hesitate to correct mistakes in testimony made earlier in the trial. It is important that the officer remain impartial and fair and not overly anxious to convict. The slightest bias should never be shown toward the defendant. The person charged is referred to as the "defendant." Do not volunteer information unnecessarily unless a question implies a discussion of events, time and place. During cross-examination the officer should be particularly careful about walking into traps set by opposing counsel. Frequently, this will be used to divert the jury's attention from real issues and put the officer rather than the defendant on trial in the minds of the jury. The defense attorney may demand a yes or no answer when the question is such that neither one, without qualification, can possibly be a correct answer. In this case the officer has to state the question cannot be correctly answered by either yes or no and he is willing to give the facts as he understands them. If asked whom he has talked to about the case and who told him to testify as he does the officer may walk into another trap. He may also be accused of refreshing his memory, in which case it is perfectly legitimate, and the officer should state that he has used the process known as "refreshing and recollecting" and also that he has discussed the matter with superiors, attorneys and any

witnesses he may have contacted. Frequently the term "on or about" is used in referring to time. For example, on or about 5:00 p. m. I saw John Doe shoot and kill a drake pintail. If shooting time for migratory waterfowl closed at 5:00 this type of statement would be inconclusive evidence since opposing counsel could contend that it might just as well have been before 5:00 as after. In case it was not permissible to have doves in possession between the 5th and 15th of March, the following statement is admissible: "on or about" the 10th day of March but between the 5th and 15th, I found John Doe in possession of 10 doves. Insofar as possible the officer-witness should be alert but easy and dignified on the witness stand. He should sit erect, with feet on the floor and with hands folded easily in the lap or on the arms of the witness chair. Under no circumstances should the officer allow himself to indulge in nervous mannerisms, or in any way react so that the jury will be disconcerted or annoyed by his acts. He should maintain an even temper and not be evasive or argue with either the opposing counsel or the court. His personal appearance should be above reproach. Such items as shined shoes, clean, well-pressed clothes and be freshly shaven are absolutely necessary.

After testimony is complete the officer should leave the court unless he has been asked by the court or prosecuting attorney to stay. Staying in court after testimony may create the impression that the officer is over-anxious to convict and over-concerned about the outcome of the case.

## TEACHING WATERFOWL IDENTIFICATION

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It has long been apparent that no organization, public or private, can be any better nor gain more public acceptance than that which its "customer" is willing to give it. In our case we are dealing with a rather unusual commodity—wildlife. Few, if any, of our "customers" feel any actual responsibility, either moral or actual, for the perpetuation of the sports of hunting and fishing. The public knows there is an organization within the State charged with the conservation of these resources, and to the average citizen this organization, except in the vaguest sense, consists of one or two wildlife officers in the local community. These officers are in fact the heart of the body of our wildlife conservation program. Upon their professional ability to properly discharge their duties rests the success or failure of an entire program. It then behooves those in administrative capacities to give to these men every tool with which to build a sound, constructive program in the local community.

One of the most efficient tools which we may give to our field representatives is knowledge of the materials with which he must daily work. The enforcement officer in wildlife management work is no longer one who is placed in his position of office by political patronage. He is indeed a "professional" man in every sense of the word. He no longer deals with enforcement alone, but must be proficient in many allied fields of conservation. It is to him, and often him alone, that the public looks for the answers to their problems concerning wildlife conservation. If he does not have the training, the ability to give reasonable answers to these questions, the whole organization suffers in the eyes of the local community. The entire organization is usually judged by the ability of the local representative.

In South Carolina the Wildlife Resources Department has recognized the value of well trained personnel in the field. Several years ago a search was instituted to find better methods of training the enforcement man in all phases of wildlife resources conservation. One of the first steps was to acquaint him with the commodity with which he works. It was found that one of the weaker